UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

GILLIAN McLEOD,	***)***	
	)	
Plaintiff	***)***	
	)	
v.	***)***	***Docket No. 99-233-P-H***
	)	
STATE OF MAINE DEPARTMENT	***)***	
OF HUMAN SERVICES,	***)***	
	)	
Defendant	***)***	

RECOMMENDED DECISION ON
DEFENDANT'S MOTION TO DISMISS

The State of Maine Department of Human Services ("DHS") moves pursuant to Fed. R. Civ. P. 12(b) to dismiss Gillian McLeod's two-count complaint on three alternate bases, including the necessity for so-called *Younger* abstention. Defendant's Motion To Dismiss, etc. ("Defendant's Motion") (Docket No. 3). Inasmuch as the doctrine of *Younger v. Harris*, 401 U.S. 37 (1971), compels a conclusion that the court refrain from hearing this case, I recommend that the motion be granted.

I. Applicable Legal Standards

When a defendant moves to dismiss on *Younger* abstention grounds, the plaintiff bears the burden of demonstrating that an exception to the doctrine justifies the exercise of the court's jurisdiction. *See, e.g., Phelps v. Hamilton*, 122 F.3d 885, 889-90 (10th Cir. 1997); *Allen v. Louisiana State Bd. of Dentistry*, 835 F.2d 100, 103 n.1 (5th Cir. 1988).

II. Background

McLeod alleges that her three minor children were removed from her custody and placed in the custody of DHS in August 1997. Complaint (Docket No. 2) at [1]. DHS purportedly failed to provide certain services mandated by state law, among them an effort to reunite McLeod and her children. *Id*. At some unspecified date DHS sought a "cease reunification" order, which was granted by the Maine District Court. *Id*. at [2]. The Law Court affirmed this judgment. *Id*. DHS contends, and McLeod acknowledges, that she is in the midst of an ongoing state-court child protection proceeding in which the next step in the continuum is termination of parental rights. Defendant's Motion at 1-3; Plaintiff's Objection to Defendant's Motion To Dismiss ("Opposition") (Docket No. 4) at [2] ("In this case, the pending action in state courts is to terminate Ms. McLeod's parental rights of her three children."). On the basis of alleged violations of her rights pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq*. ("ADA"), and the due-process clause of the Fourteenth Amendment to the United States Constitution, McLeod asks this court to issue an injunction compelling DHS to provide reunification services and to award damages (including punitive damages), costs and fees. *See generally* Complaint.

III. Analysis

A federal court pursuant to the *Younger* doctrine must abstain from hearing a case over which it has jurisdiction "so long as there is (1) an ongoing state judicial proceeding, instituted prior to the federal proceeding (or, at least, instituted prior to any substantial progress in the federal proceeding), that (2) implicates an important state interest, and (3) provides an adequate opportunity for the plaintiff to raise the claims advanced in [her] federal lawsuit." *Brooks v. New Hampshire Supreme*

Court, 80 F.3d 633, 638 (1st Cir. 1996).[1] Here, all three conditions are met.

McLeod concedes that she is in the midst of ongoing state child-custody proceedings. She does not argue that those proceedings antedate the filing of the instant complaint. *See generally* Opposition.

The question of child custody implicates an important, if not paramount, state interest. *See, e.g., Moore v. Sims*, 442 U.S. 415, 423 (1979) (recognizing applicability of *Younger* doctrine to cases concerning state proceedings for temporary removal of child in child-abuse context); *Malachowski v. City of Keene*, 787 F.2d 704, 708 (1st Cir. 1986) (noting that Supreme Court had expanded applicability of *Younger* doctrine to many categories of civil proceedings, including state child-custody actions).[2]

Finally, Maine courts afford an opportunity to challenge a state-initiated child-welfare or child-custody proceeding on federal statutory or constitutional grounds. *See, e.g., In re Christmas C.*, 721 A.2d 629, 631-32 (Me. 1998) (adjudicating challenge to cease-reunification order on federal constitutional due-process grounds); *In re Angel B.*, 659 A.2d 277, 279 (Me. 1995) (adjudicating challenge to termination of parental rights on ADA grounds). *See also Moore*, 442 U.S. at 425 ("The pertinent issue is whether appellees' constitutional claims could have been raised in the pending state proceedings.").

Satisfaction of these three requirements usually ends the *Younger* inquiry; however, "a

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[1]"As a normal consequence, *Younger* abstention forces the parties to a state court proceeding to litigate federal claims and defenses through the state court system, with discretionary appellate review by the United States Supreme Court as a last resort." *Casa Marie, Inc. v. Superior Court*, 988 F.2d 252, 262 n.10 (1st Cir. 1993).

[2]To the extent that McLeod argues that the *Younger* doctrine is confined to cases concerning pending state criminal charges only, *see* Opposition at [1]-[2], she is in error.

federal court may nonetheless intervene to halt an ongoing state judicial proceeding if the plaintiff demonstrates bad faith, harassment, or any other unusual circumstance." *Brooks*, 80 F.3d at 639 (citation and internal quotation marks omitted). McLeod argues that she will suffer "irreparable injury" if DHS is permitted in the pending state-court action to terminate her parental rights. Opposition at [2]. The grievousness of the injury McLeod faces is undeniable; however, its gravity alone does not suffice to carve an exception to *Younger* abstention. The possibility of such an injury inheres even in perfectly conducted state proceedings to sever parental rights. McLeod fails to demonstrate bad faith, harassment or any other circumstance from which one could infer that the state courts' ability to field her claims would be compromised. *See, e.g.*, *Moore*, 442 U.S. at 432-33 (exception to *Younger* abstention warranted if, apart from showing of bad faith, harassment or flagrant and patent constitutional violations, "extraordinary circumstances render the state court incapable of fairly and fully adjudicating the federal issues before it") (citation and internal quotation marks omitted)*; Malachowski*, 787 F.2d at 709 (appellants pleaded no facts adequate to support assertion that they had been victims of conspiracy in state proceedings).

In sum, McLeod falls short of demonstrating a compelling reason for this court to consider intruding into pending state child-custody proceedings through the granting of either the injunctive or monetary relief she seeks. *See, e.g., Bettencourt v. Board of Registration in Med.*, 904 F.2d 772, 777 (1st Cir. 1990) (noting that injunction could immobilize and money damages embarrass pending state proceedings to revoke plaintiff's license to practice medicine).

IV. Conclusion

For the foregoing reasons, I recommend that the defendant's motion to dismiss be **GRANTED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 2nd day of November, 1999.

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David M. Cohen
United States Magistrate Judge